IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

: O R D E R :

Smt. Urmila Devi
Vs.
The Director & Chief Executive,
Rajasthan Power Development Authority & Others.

(S.B. Civil Writ Petition No.5203/2004)

DATE OF ORDER : April 27, 2007

P R E S E N T

Hon'ble Mr. Justice Gopal Krishan Vyas

Mr. D.D. Thanvi & Mr. Arvind Shrimali for the petitioner.
Mr. Mahesh Bora and Mr. S.G. Ojha for the respondent(s).

BY THE COURT :

In this writ petition, the petitioner is challenging the order passed by the learned trial Court on 25.02.2003 whereby application filed by respondent No.3 under Order 1 Rule 10 (2), C.P.C. was allowed.

As per facts of the case, the petitioner filed a suit in the Court of Civil Judge (Sr. Dn.), Udaipur for eviction and arrears

of rent against respondent No.2 on 15.05.2000. As per the plaint, it is mentioned by the petitioner that she is owner of the property in question because she purchased the same by registered sale-deed on 16.10.1999 and the said property is in occupation of respondents No.1 and 2, therefore, she is entitled for decree of eviction on the ground of default and personal bona fide necessity. In the suit, provisional rent was also determined; thereafter, respondent No.3 filed application on 04.04.2002 under Order 1 Rule 10(2), C.P.C. for being impleaded as plaintiff in the suit. It is stated in the application that the plaintiff-petitioner has not mentioned about the will executed by late Shri Mangilal Bhatt and she has no right to collect the rent. A detailed reply to the application filed by respondent No.3 was filed by the petitioner and it was submitted in the reply that the suit is not for determination of right over the property and if respondent claims any ownership or right over the property then he can do so before proper forum for quashing the sale-deed in respect of the property over which she claims right title. It is also submitted that stranger cannot be permitted to be impleaded in the suit. The registered sale-deed dated 16.10.1999 is also placed on record of the writ petition.

It is submitted by the petitioner that the suit filed by the

petitioner was for eviction and respondent No.3 is claiming to be impleaded as plaintiff alongwith the petitioner in the suit which is not permissible under the law bevcause being owner of the property the present petitioner filed suit and the ownership according to the petitioner is established under the sale-deed executed in her favour but the learned trial Court, after hearing both the parties, impleaded respondent No.3 as co-plaintiff in the suit on the basis of the will produced by respondent No.3.

Learned counsel for the petitioner contended that the order impugned is illegal and material irregularity has been committed by the trial Court while allowing application filed under Order 1 Rule 10, C.P.C. for impleading him as co-plaintiff in the suit.

Learned counsel for the respondent prayed that the said premises for which the petitioner-plaintiff filed suit is belonging to him because there is will in his favour. As per arguments of learned counsel for respondent No.3 he is disputing the sale-deed because the seller of the property to the plaintiff-petitioner is the husband of plaintiff and real brother of respondent No.3. As such under the will he is claiming right over the property. The learned trial Court has rightly impleaded him as plaintiff.

After perusal of the application and reply filed thereto and sale-deed as well as other documents filed in the writ petition, it

is apparently clear that the plaintiff-petitioner filed suit against respondents No.1 and 2 being owner of the property and ownership come to her under the sale-deed and obviously if sale-deed is in favour of the plaintiff petitioner and on the basis of that she has filed the suit then no other person can claim that he also has right over the property on the basis of the will ignoring the sale-deed in favour of the plaintiff.

It may be observed here that the person who is claiming any right over the property then he has to get adjudication by proper Court challenging the sale-deed and, after having acquired right over the ownership, he can file suit for eviction or he can say that he is entitled to file the suit.

In this case, admittedly, the petitioner is owner of the proper under the sale-deed on the record as Annex.-5 dated 16.10.1999, therefore, the learned trial Court vide the impugned order committed error of law in allowing the application filed by respondent No.3 under Order 1 Rule 10, C.P.C. in the suit filed by the petitioner-plaintiff for eviction of respondents No.1 and 2. The proper course left for the respondent No.3 for the purpose of ownership is to challenge the sale-deed claimed by the petitioner to have been executed in her favour and, without cancellation of that sale-deed, respondent No.3 cannot claim to be impleaded as

co-plaintiff in the suit.

In the facts and circumstances indicated above, the writ petition is allowed. Impugned order dated 25.02.2003 (Annex.-6) is quashed and set aside. Application filed under Order 1 Rule 10(2), C.P.C. is ordered to be rejected.

There shall, however, be no order as to costs.

(Gopal Krishan Vyas) J.